

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petitions:** 45-003-13-1-5-02033-16  
45-003-14-1-5-01134-16  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-07-13-481-005.000-00  
**Assessment Years:** 2013 & 2014

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

**PROCEDURAL HISTORY**

1. Mr. Nowacki contested the 2013 and 2014 assessments of his property located at 4727 West 28<sup>th</sup> Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations valuing the vacant residential property at \$900 for 2013 and \$1,400 for 2014.<sup>1</sup>
2. Nowacki filed Form 131 petitions with the Board and elected to proceed under our small claims procedures. On December 7, 2020, Ellen Yuhan, our designated Administrative Law Judge (“ALJ”) held a hearing on Nowacki’s petitions. Neither she nor the Board inspected the property.
3. Nowacki appeared pro se. The Assessor appeared by hearing officer Joseph E. James. Both were sworn as witnesses.

**RECORD**

4. The official record for this matter contains the following:
  - a. Petitioner Exhibit A: GIS map  
Petitioner Exhibit B: Property Record Card (2010-2014)  
Petitioner Exhibit C: Property Record Card (2015-2019)
  - b. The record for the matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in these appeals; (2) all notices and orders issued by the Board or our ALJ; and (3) an audio recording of the hearing.

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<sup>1</sup> The Assessor’s records show \$1,400 for 2013.

## BURDEN OF PROOF

5. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances--where the assessment under appeal represents an increase of more than 5% over the prior year or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. Ind. Code § 6-1.1-15-17.2 (b) and (d).
6. Here, the value of the property decreased from 2012 to 2013. Nowacki therefore bears the burden of proof for 2013. The value increased from 2013 to 2014. The Assessor would have had the burden of proof for 2014 but agreed to a decreased value for 2013 of \$900. To the extent that Nowacki requests a lower value the burden is on him.

## SUMMARY OF CONTENTIONS

7. Nowacki's case:
  - a. Nowacki contended that the property record card is almost without value. There is no regard for the accuracy of the information on it. There are no roads and no utilities to the property. At least half of the information on the card is incorrect. *Nowacki testimony; Pet'r Exs. B & C.*
  - b. Nowacki argues that while the Assessor characterizes the \$900 value for 2013 as an error in his favor it should still be decreased further to \$500. This error is reflective of the errors in the entire system. Nowacki argues that the system that taxpayers depend on has ravaged the community and made it impossible to conduct the normal business of buying and selling property. *Nowacki testimony.*
  - c. A property on one block and a different property on another block close to it in this subdivision are identical. Looking at the maps, a person cannot identify any characteristics that would change the value of one and not the other, yet one is valued at a significantly lower amount. *Nowacki testimony.*
  - d. The property record card shows the values changing from year to year, but there are no sales. The only sales are at the auction. He paid \$66 for this property and \$107 for a different property he bought at the auction. *Nowacki testimony; Pet'r Exs. B & C.*
  - e. Nowacki argued that the base rates for the neighborhoods are incorrect. A nearby subdivision is assessed at a lower rate even though it is virtually identical to the subdivision where his property is located. He has tried to get a neighborhood map from the township and he still has not received it. It is a crucial element of the factors that determine the value of these lots. *Nowacki testimony; Pet'r Ex. A.*

f. Indiana law protects taxpayers with tax cap rates of 1%, 2%, and 3% for property. Owners have rights requiring that properties be assessed at a fair market value. Properties have to be assessed with some uniformity. Nowacki contended that when an assessed value is off by almost 100%, the Assessor violates the property owners' rights under Indiana law. *Nowacki testimony*.

8. The Assessor's case:

a. The Assessor agreed that the 2013 and 2014 assessments should be \$900. *James testimony*.

#### ANALYSIS

9. Nowacki failed to make a case for further reducing the property's 2013 and 2014 assessed values. The Assessor conceded that the assessed value for 2014 should be reduced to \$900. The Board reached this decision for the following reasons:

- a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. "True tax value" does not mean "fair market value" or "the value of the property to the user." Indiana Code § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). Ind. Code § 6-1.1-31-5(a); Ind. Code § 6-1.1-31-6(f). The DLGF defines "true tax value" as "market value in use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." MANUAL at 2.
- b. Evidence in an assessment appeal should be consistent with that standard. For example, market value-in-use appraisals that comply with the Uniform Standards of Professional Appraisal Practice often will be probative. *See Id. See also Kooshtard Property VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). Taxpayers may use cost or sales information for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *Id.* Ind. Code § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments in property tax appeals explaining that the determination of comparability must be made in accordance with generally accepted appraisal and assessment practices). The party must offer relevant market-based evidence. March 1 is the legal assessment date for 2013 and 2014. Ind. Code § 6-1.1-2-1.5(a).
- c. Nowacki failed to present any market-based evidence to support the values he requested, which were \$500. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).

- d. Nowacki claims the subject property's base rate is higher than the rate of an adjacent subdivision. We interpret and address this argument as a challenge to the uniformity and equality of his assessment. The Tax Court previously held that when taxpayers challenge the uniformity and equality of their assessment one approach they may adopt involves the presentation of assessment ratio studies comparing the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sales prices or market value-in-use appraisals. *Westfield Golf Practice Ctr, LLC v. Wash. Twp. Ass'r*, 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007).
- e. Such studies, however, must be prepared according to professionally acceptable standards and be based on a statistically reliable sample of properties that sold. *Bishop v. State Bd. Of Tax Comm'rs*, 643 N.E.2d 810, 813 (Ind. Tax Ct. 2001). When a ratio study shows that a given property is assessed above the common level of assessment, that property's owner may be entitled to an equalization adjustment. See *Department of Local Gov't Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227 (Ind. 2005) (holding that the taxpayer was entitled to seek an adjustment on grounds that its property taxes were higher than they would have been if other property in Lake County had been properly assessed).
- f. While Nowacki contends his assessment is too high compared to properties in an adjacent subdivision, he presented no evidence showing the base rate in the purportedly comparable subdivision nor did he present any evidence showing the adjacent subdivision was comparable to the subject property. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *Long v. Wayne Township Assessor*, 821 N.E.2d 466 at 470 (Ind. Tax Court 2005).
- g. We also give no weight to his claims regarding the property's changing assessments. As the Tax Court has explained, each tax year and each appeal process stand alone. *Fisher v. Carroll Cnty Ass'r*, 74 N.E.3d 582 (Ind. Tax Ct. 2017). Evidence of a property's assessment in one year, therefore, has little bearing on its true tax value in another. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001).
- h. Nowacki contends the characteristics on the property record card are not accurate. He did not show how any changes to the property record card would affect the market value-in-use of the property. Simply contesting the methodology is insufficient to make a prima facie case of an error in the assessed value. *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674 at 678 (Ind. Tax Court 2006).
- i. Because Nowacki offered no probative market-based evidence to demonstrate the property's correct market value-in-use for 2013, he failed to make a prima facie case for a lower assessed value. We now turn to the 2014 assessment. Following the reduction for the 2013 assessed value, the property's assessed value increased in

2014. The Assessor agreed that the 2014 value should be lowered to \$900. Nowacki contended that it should be \$500 instead. He relied on the same evidence and arguments for the prior year. We therefore reach the same conclusion. He failed to make a prima facie case for a lower assessed value.

#### **FINAL DETERMINATION**

In accordance with the above we order no change to the 2013 assessed value. We accept the Assessor's recommendation that the 2014 assessed value be decreased to \$900.

ISSUED: February 26, 2021

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

#### **- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.